

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CHRISTOPHER WALLACE,	)	
	)	
Plaintiff,	)	
vs.	)	Case No. 2:16-cv-01565-LPL
	)	
RICH FITZGERALD, County	)	
Executive, et al.,	)	
Defendants.	)	

ALLEGHENY COUNTY DEFENDANTS'  
NOTICE OF PROPOSED SUMMARY JUDGMENT

Wallace claims that the County Defendants, Warden Harper, Rich Fitzgerald and Allegheny County were deliberately indifferent to his serious medical conditions by failing to provide or properly supervise his medical care while he was an Allegheny County Jail (ACJ) inmate from 2/12/15 to 5/30/15. Specifically, Wallace claims that Corizon's employees did not provide the tube feedings he required for nourishment while he was an ACJ inmate.

Wallace's physical condition when he came to the ACJ was poor. On 2/12/15 he weighed 112.4 lbs on a 6' 4" frame. The ACJ immediately sent him to Mercy Hospital. On 2/16/15 Mercy released him to the ACJ, having concluded he was medically fit to be housed in the ACJ. Wallace weighed 111 lbs when he returned to the ACJ on 2/16/15. On 2/19/15 Mr. Wallace told a friend on the telephone that he had gained 11 lbs. Wallace was taken again to Mercy hospital on 3/2/15 and remained there until he was released back to the ACJ on 3/9/15. On 3/15/15 Wallace was taken to Mercy for the third time by the ACJ because of atrial fibrillation. His weight on 3/15/15 was reported at the hospital as 127.6 lbs, which is his greatest recorded weight between 2/12/15 and 4/3/15.

Wallace makes no claims regarding his medical treatment from when he returned to the ACJ from Mercy Hospital (Mercy) on 4/3/15 until his permanent release on 5/30/15. So the

period of time relevant to his claims is 2/12/15 to 4/2/15. There were 49 days between 2/12/15 and 4/2/15. During those 49 days Wallace was in the ACJ for 18 full days and in Mercy Hospital for all or part of the other 31 days.

In recorded telephone calls, Wallace acknowledges that he was capable of doing his own tube feedings. (RC<sup>1</sup>, 2/17/15 at 12:21:10 to 412-735-0408). He also acknowledges that during at least part of his time in the ACJ he was being fed and that he gained 11 pounds and had tube feeding supplies in his cell. (2/19/15 at 16:15:36 to 412-430-2285; 2/23/15 17:29:10 to 412-430-2285; 2/23/15 19:12:21 to 412-735-0408, and others). To the extent that tube feeding supplies were unavailable, which is not admitted, it was not for an extended period of time and there is no evidence that the Warden was aware that tube feeding supplies were allegedly unavailable or that it was the result of an Allegheny County custom or practice.

Wallace did not file any written complaints or grievances regarding his treatment. Wallace testified in deposition that he verbally complained to Warden Harper one time when he saw him in the infirmary at an unspecified date in February and told the Warden that he was not being fed. The Warden said that he would speak with the doctor. The second time Wallace talked to the Warden was in April when he told the Warden that he was being treated well.

**RICH FITZGERALD:** Mr. Fitzgerald is the Allegheny County Executive. His deposition was never taken. There is no evidence that Mr. Fitzgerald acted or failed to act upon anything specifically related to Wallace. There is no evidence that he was deliberately indifferent to deficiencies in Corizon's provision of care to ACJ inmates.

**WARDEN ORLANDO HARPER:** Beginning in June 2014, Warden Harper or his staff required and held almost daily meetings with Corizon to discuss and resolve medical issues

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<sup>1</sup> "RC" refers to a recorded telephone call placed by Wallace from the ACJ.

related to inmates. Mr. Wallace is mentioned in three of these entries and in each it was reported that the issue was resolved. None of these entries involved alleged failures to provide proper nourishment. From the Warden's perspective Wallace was housed in the infirmary and under the care of medical professionals, he had not received any written complaint of grievance related to Wallace's treatment and only one verbal complaint.

**ALLEGHENY COUNTY**: Corizon was selected through a competitive bidding process. The bids were reviewed by a committee that included medical professionals. The committee recommended acceptance of the Corizon bid and the contract was awarded based on that recommendation. The Corizon contract was a two-year contract with a County option to extend the contract for a third year. The County did not exercise that option and Corizon's services ended August 31, 2015. There is no evidence that the County was negligent let alone deliberately indifferent when it contracted with Corizon or that it was aware of any alleged failure by Corizon to provide the Plaintiff with needed tube feedings.

The County Defendants made provisions to provide Plaintiff with necessary health care services. He was under the care of physicians, nurses and nurse practitioners and on three separate occasions he was transferred by the ACJ to Mercy Hospital for treatment. If Plaintiff did not receive adequate medical care, the County Defendants did not know it.

Respectfully submitted,

/s/ John A. Bacharach

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